

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
)
RYAN ALLEN DENHAM) CASE NO. 18-02561-JMC-7
dba XAVIER INDUSTRIAL,)
)
)
Debtor.)

MOTION TO DISMISS FOR FAILURE TO QUALIFY
AS A DEBTOR UNDER 11 U.S.C. §109(g)

Now Comes the Movant, Kyle Long, a creditor and party in interest in the above referenced bankruptcy case, by counsel, Ethan D. Myers, and moves the Court to dismiss this Bankruptcy. In support, Movant states as follows:

1. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §1334.
2. On April 10, 2018, the Debtor in this case, Ryan Allen Denham *dba* Xavier Industrial (“Denham”), filed for Bankruptcy relief pursuant to Chapter 7 of Title 11 of the United States Code (the “Bankruptcy Code”).
3. Debtor Denham previously filed for relief under Chapter 7 of the Bankruptcy Code on September 11, 2017, under Bankruptcy Petition Number 17-06854-JMC-7.
4. Previous Bankruptcy Petition Number 17-06854-JMC-7 was dismissed on February 26, 2018, because Denham failed to appear at three separate scheduled First Meeting of Creditors.
5. Pursuant to 11 U.S.C. §109, Denham is barred from filing a Bankruptcy Petition for 180 days from the date of his last Petition’s dismissal: “...no individual or family farmer may

be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if...the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case..." 11 U.S.C. §109(g)(1).

6. Denham was given three opportunities to attend the 341 Creditor Meetings and failed to appear at all of them. Upon information and belief, Denham failed to notify the Trustee or request a continuance in all three instances.
7. Pursuant to the Federal Rules of Bankruptcy Procedure Rule 4002(a), the Debtor shall "attend and submit to an examination at the times ordered by the court..."
8. Denham failed to abide by the orders of the Court by failing to attend the required 341 Creditor Meetings on three separate occasions.
9. Denham filed his Petition on April 10, 2018 in violation of 11 U.S.C. § 109(g). Accordingly, the 180-day bar on refiling is tolled during the pendency of the second Petition. *See In re Moody*, 336 B.R. 876, 880 (Bankr. S.D. Ga. 2005); *In re Wilson*, 85 B.R. 72, 73 (Bankr. N.D. Ill. 1988).

WHEREFORE, Movant Kyle Long respectfully requests this Court for an Order that:

- A. Sets a hearing, if necessary, to determine this matter;
- B. Dismisses this Bankruptcy, Case Number 18-02561-JMC-7;
- C. Instructs Debtor Denham that he may not file another Bankruptcy Petition until 180 days after the dismissal of his previous case on February 26, 2018, plus the days that Case Number 18-02561-JMC-7 is open and pending; and
- D. All other just and proper relief under the circumstances.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on May 4, 2018, a Motion to Dismiss for Failure to Qualify as a Debtor Under 11 U.S.C. §109(g) was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

Deborah J. Caruso: trusteeccaruso@rubin-levin.net

U.S. Trustee: ustregion10.in.ecf@usdoj.gov

Ryan Denham: rdenham33@yahoo.com



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